IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10-10-2006

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.1178 of 2004

Mohan Raj .. Appellant

vs

The State by
The Inspector of Police
Sirumugai Police Station
Coimbatore District
Crime No.225/2002 .. Respondent

Criminal appeal preferred under Sec.374(2) of Cr.P.C. against the judgment of the Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore, in S.C.No.22 of 2004 dated 4.8.2004.

For Appellant : Mr.K.Kalyanasundaram

For Respondent : Mr.P.Kumaresan, A.P.P.

JUDGMENT

(Judgment of this Court was delivered by M.CHOCKALINGAM, J.)

Challenging a judgment of the Additional Sessions Division, Coimbatore, made in S.C.No.22 of 2004 whereby the appellant ranked as A-2, along with another ranked as A-1, stood charged under Sections 302 and 201 of I.P.C. and found guilty as per the charges and awarded life imprisonment with a fine of Rs.5,000/- and default sentence and 3 years Rigorous Imprisonment along with a fine of Rs.1,000/- and default sentence respectively, the appellant/A-2 has preferred this appeal.

2.The short facts necessary for the disposal of this appeal can be stated thus:
(a) A-1 is the husband of the deceased Sarasal. A-2 was also working along with him. The deceased, A-1 and A-2 were all doing work in a brick chamber. She was suffering often out of the stomach pain, and despite treatment, she could not set it right. A-2 informed her that his mother was giving native treatment, and hence, they could go to the village. On 4.7.2002, A-1 along with his wife Sarasal, since deceased, and the children went over to Puliampatti, where the house of A-2 was situated, and they were staying in that house. On the next day i.e., 5.7.2002, A-1 and A-2 went over to see the mother of A-2. In the evening hours, both A-1 and A-2 went outside, consumed arrack and returned at 8.00 P.M. After A-1 went asleep, A-2 called the deceased for sharing the bed, to which course she was not amenable. Immediately, he dragged her, took her to the rock side situated on the back of

the house and dashed her head on the rock. She succumbed to the injuries. The incident was witnessed by P.W.8. Then, A-2 came inside the house, woke up A-1 and informed of his act. Both of them planned to suppress the same. They took the dead body to a place and buried the same. They kept quiet for sometime. After a few days that was on 9.7.2002, A-1 met P.W.1, the Village Panchayat President, and informed him about the incident. He gave an extra-judicial confession, which was recorded. Then, A-1 was taken to the respondent Police Station where P.W.11, the Sub Inspector of Police, was present, on 9.7.2002 at about 4.00 P.M. P.W.1 gave a report, Ex.P13, to him, on the strength of which, a case came to be registered in Crime No.225/2002 under Sec.302 of I.P.C. The First Information Report, Ex.P14, was despatched to the Court.
(b) P.W.12, the Inspector of Police, on receipt of the copy of the FIR, took up investigation and recorded the confessional statement voluntarily given by A-1. The admissible part is marked as Ex.P7. Pursuant to the same, A-1 took the Investigator to the place where the dead body was buried. Accordingly, the Investigator proceeded to the place which was identified by A-1, made an inspection in the presence of witnesses and prepared Ex.P8, the observation mahazar, and Ex.P15, the rough sketch. Then, A-1 took the Investigating Officer to the place of occurrence. There also, the Investigator prepared an observation mahazar, Ex.P9, and a rough sketch, Ex.P16, was also drawn. The matter was informed to the Tahsildar, P.W.5, who made a visit over there. In the presence of P.W.5, the dead body was exhumed. He conducted an inquest on the dead body of Sarasal in the presence of witnesses and prepared a report, Ex.P6. He gave a requisition to the Medical Person for the purpose of autopsy.
(c) P.W.9, the Medical Officer, attached to the Government Hospital, Salem, on receipt of the requisition, conducted autopsy on the dead body of Sarasal and found the following injuries.

"1) A contusion present on left temporal region of scalp 8 x 5 x 0.5 cm.
2) A fissured fracture present on left temporal bone 6 cm in length. (antemortem injury)"
The Doctor has issued Ex.P10, the postmortem certificate, with his opinion that the deceased died of head injuries.
(d) All the material objects recovered from the dead body, were subjected to chemical analysis, as a result of which Ex.P11, the Chemical Analyst's report, was received by the Court. P.W.13, the Inspector of Police, took up further investigation. On completion of investigation, the final report was filed by the Investigator as against A-1 under Sections 302 and 201 of I.P.C. and as against A-2 under Sec.201 of I.P.C.

3.The case was committed to Court of Session, and the charges were framed as found in the charge sheet. The matter was taken up for trial. In order to prove the charges, the prosecution marched 13 witnesses and also relied on 16 exhibits and 4 material objects. After the examination of P.W.8, the trial Court thought it fit to re-arrange the charges, and accordingly, it framed charges under Sec.302 of I.P.C. as against A-2 and under Sec.201 of I.P.C. as against A-1 and A-2. The trial was further proceeded and the witnesses were examined. On completion of the evidence on the side of the prosecution, the accused were questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which they flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced on either side and also scrutinised the materials and found A-1 guilty under Sec.201 of I.P.C. and A-2 guilty under Sections 302 and 201 of I.P.C. and awarded the punishment as referred to above. Aggrieved, A-2 has preferred this appeal.

4.Advancing his arguments on behalf of the appellant, the learned Counsel would submit that the occurrence has taken place on 5.7.2002 at 8.00 P.M.; but, the case rested upon the extra-judicial confession alleged to have been given by A-1 to P.W.1, the Village Panchayat President, on 9.7.2002 at 4.00 P.M.; that there was no reason for A-1 to approach P.W.1 to give such a confessional statement; that had he been aggrieved, there was all possibility for him to approach either the

higher officials or any police immediately; that even according to the prosecution, it was not A-1 who committed the crime; but, it was A-2 who committed the murder; that on the strength of the extra-judicial confession alleged to have been given by A-1 to P.W.1, a case came to be registered, and thus, there was a long delay noticed; that apart from that, there is no reason for A-1 making such a confession; and that it is pertinent to point out that any amount of confession made by A-1, cannot bind A-2.

5.The learned Counsel would add that in the instant case, originally on completion of the investigation, after the examination of the witnesses, a charge sheet was laid by the Investigating Officer wherein A-1 was accused of murder and A-2 was accused of screening of evidence along with A-1; that after the examination of P.W.8, the lower Court has rearranged the charges and made a specific charge as against A-2, the appellant herein, under Sec.302 of I.P.C. without any basis whatsoever; that the only material, according to the lower Court for rearranging the charge, was the evidence of P.W.8, a child witness, aged 6 years; and that according to P.W.8, she witnessed the occurrence, and only after both the accused went to bed, it was A-2 who came over and called her mother outside for sharing the bed, to which course she was not amenable, and he caught hold of her, took her to the rock side which is situated behind the house, dashed her head on the rock and caused her death.
6.The learned Counsel would further add that P.W.8 was examined by the Inspector of Police on 9.7.2002 itself; that in the earliest statement recorded by the Investigator under Sec.161 of Cr.P.C., she has not spoken anything about the same; but, she has stated in the evidence before the Court; that the explanation tendered by P.W.8 that because she was threatened by A-2, she did not utter these things before the Investigating Officer, but stated before the Court, cannot be countenanced; that if such an explanation was to be accepted, any witness can come and speak before the Court anything about any accused; and that under the circumstances, the lower Court should not have rearranged the charges or made a specific charge under Sec.302 as against A-2.

7.Added further the learned Counsel that in the instant case, even the place of burial was identified only by A-1; that no incriminating circumstances were found as against A-2; that there was no material at all connecting A-2 with the crime in question namely either murder or screening of evidence; that the lower Court has not considered all these aspects of the matter, but found him guilty, and hence, the appellant is entitled for an acquittal in the hands of this Court.

8.The Court heard the learned Additional Public Prosecutor on the above contentions.

9.The Court paid its anxious consideration on the submissions made and had a thorough scrutiny of the entire materials available.

10.It is not a fact in controversy that the wife of A-1 and the mother of P.W.8, namely Sarasal, died out of homicidal violence. Following the exhumation of the dead body, an inquest was done by the Tahsildar, and the dead body was subjected to postmortem by P.W.9, the Doctor. He has given a certificate, Ex.P10, wherein he has opined that she died of head injuries. This fact that she died out of homicidal violence was never questioned by the appellant/accused at any stage of the proceedings, and hence, it could be safely recorded so.

11.Now, the question that would arise for consideration is whether the prosecution has brought home the guilt of the appellant/A-2. The gist of the prosecution case as could be seen above, was that on 5.7.2002 at about 8.00 P.M., A-1 and A-2 after consuming arrack, came back to the house of A-2; that at that time, when A-1 went to bed, A-2 tried to take his wife, who was lying inside; but, she was not amenable for that; that immediately, A-2 got provoked; that he took her outside; that in that anguish, he dashed her head on the rock side situated behind the house and caused her death, and it

was witnessed by P.W.8. The only witness available before the trial Court was P.W.8. It is pertinent to point out that the Investigating Officer has candidly admitted that P.W.8 in her statement which was originally recorded by him under Sec.161 of Cr.P.C. on 9.7.2002 i.e., the very day of the registration of the case, she did not speak anything about the involvement of A-2 as now put forth before the Court. Originally, the final report was filed by the Investigating Officer under Sec.201 of I.P.C. as against A-2 and under Sections 302 and 201 of I.P.C. as against A-1. After the examination of P.W.8, the trial Court has altered the charge as against both. So far as A-1 was concerned, he was charged under Sec.201 of I.P.C., and as regards A-2, charges were framed under Sections 302 and 201 of I.P.C. Now, at this juncture, it is pertinent to point out that the procedure followed by the trial Court was not proper. That apart, in the instant case, there were no materials available for altering the charges. It is true that P.W.8 has given such an evidence; but, that version was not found in the statement recorded by the Investigator under Sec.161 of Cr.P.C. at the earliest. Thus, it was a different version given by P.W.8, a child and the only witness, who spoke the prosecution case. The lower Court instead of finding that it was shaking the entire case of the prosecution, has altered the charges and has also found the appellant/accused guilty of the same. It can be well stated that the evidence of P.W.8 cannot be accepted. Thus, except the evidence of P.W.8, the Court is unable to see any material as against A-2.

12.In the instant case, even as per the prosecution case, an extra-judicial confession was made by A-1 on 9.7.2002, after a period of four days, to P.W.1, the Village Panchayat President. Needless to say that the confessional statement made by A-1 could not bind A-2. Apart from that, it remains to be stated that the place of burial was also identified by A-1. Thus, no incriminating circumstances were found recovered or noticed by the lower Court in respect of A-2. Even then, only on the evidence of P.W.8, which was a changed version from the one what was made to the Investigating Officer, the lower Court has altered the charges and has also found the appellant/A-2 guilty. This Court cannot agree with the view taken by the trial Court as to either the alteration of the charge or the conviction of the appellant/A-2, in view of the lack of material whatsoever. Under the circumstances, the prosecution is unable to show the nexus or culpability of the appellant/A-2 with the crime. Hence, the charges levelled against him would fail. The judgment of the lower Court has got to be made undone only by upsetting the same.

13.Accordingly, the judgment of the lower Court as regards the appellant/A-2 is set aside. The appellant is acquitted of the charges levelled against him. The bail bond executed by him, shall stand terminated. The fine amounts paid by him, will be refunded to him.

14.In the result, this criminal appeal is allowed.

To;

1)The Judicial Magistrate, Mettupalayam.

2)The Judicial Magistrate, Mettupalayam,
Through The Chief Judicial Magistrate, Coimbatore.

3)The Additional District and Sessions Judge,
Fast Track Court No.II, Coimbatore.

4)The Principal Sessions Judge, Coimbatore.

5)The Superintendent, Central Prison, Coimbatore.

6)The Public Prosecutor, High Court, Madras.

7)The Officer in Charge,
Villupuram Town Police Station,
Villupuram.

8)The Inspector of Police,
Sirumugai Police Station,
Coimbatore.

9)The Officer in Charge,
Annur Town Police Station, Annur.

10)The District Collector, Coimbatore.

11)The Director General of Police, Madras.

Nsv/

[vsant 8255]